

SECOND REGULAR SESSION

HOUSE BILL NO. 2307

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAHR.

5886H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapters 135 and 166, RSMo, by adding thereto ten new sections relating to savings accounts for education, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapters 135 and 166, RSMo, are amended by adding thereto ten new sections, to be known as sections 135.712, 135.713, 135.714, 135.716, 135.719, 166.700, 166.705, 166.710, 166.715, and 166.720, to read as follows:

- 135.712. 1. Sections 135.712 to 135.719 and sections 166.700 to 166.720 establish the "Missouri Empowerment Scholarship Accounts Program" to provide options toward ensuring the education of students in this state.**
- 2. As used in sections 135.712 to 135.719, the following terms mean:**
- (1) "Department", the department of economic development;**
 - (2) "Director", the director of the department of economic development;**
 - (3) "District" or "school district", the same meaning as used in section 160.011;**
 - (4) "Educational assistance organization", a charitable organization registered in this state that is exempt from federal taxation under the Internal Revenue Code of 1986, as amended, is certified by the director, and that allocates all of its annual revenue for educational assistance, except as provided in paragraph (c) of subdivision (4) of subsection 1 of section 135.714 and as provided for in sections 135.712 to 135.719, derived from contributions for which a credit is claimed under this section;**
 - (5) "Parent", a parent, guardian, custodian, or other person with authority to act on behalf of the qualified student;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (6) "Program", the Missouri empowerment scholarship accounts program
17 established under sections 135.712 to 135.719 and sections 166.700 to 166.720;

18 (7) "Qualified student", the same meaning as used in section 166.700;

19 (8) "Qualifying contribution", a donation of cash, stock, bonds, or other
20 marketable securities for purposes of claiming a tax credit under sections 135.712 to
21 135.719;

22 (9) "Scholarship account", a savings account created by the Missouri
23 empowerment scholarship accounts program authorized by sections 166.700 to 166.720;

24 (10) "Taxpayer", an individual subject to the state income tax imposed in chapter
25 143; an individual, a firm, a partner in a firm, corporation, or a shareholder in an S
26 corporation doing business in this state and subject to the state income tax imposed by
27 chapter 143; a corporation subject to the annual corporation franchise tax imposed by
28 chapter 147; or an express company that pays an annual tax on its gross receipts in this
29 state under chapter 153, which files a Missouri income tax return and is not a dependent
30 of any other taxpayer.

 135.713. 1. For all tax years beginning on or after January 1, 2016, any taxpayer
2 who makes a qualifying contribution to an educational assistance organization may claim
3 a credit against the tax otherwise due under chapter 143, other than taxes withheld under
4 sections 143.191 to 143.265, and chapters 147 and 153, in an amount equal to one hundred
5 percent of the amount the taxpayer contributed during the tax year for which the credit
6 is claimed. No taxpayer shall claim a credit under sections 135.712 to 135.719 for any
7 contribution made by the taxpayer, or an agent of the taxpayer, on behalf of the taxpayer's
8 dependent, or in the case of a business taxpayer, on behalf of the business's agent's
9 dependent.

10 2. The amount of the tax credit claimed shall not exceed the amount of the
11 taxpayer's state tax liability for the tax year for which the credit is claimed. The
12 department shall certify the tax credit amount to the taxpayer and to the department of
13 revenue. A taxpayer may carry the credit forward to any of such taxpayer's four
14 subsequent taxable years. All tax credits authorized under the program may be
15 transferred, sold, or assigned.

16 3. The cumulative amount of tax credits that may be allocated to all taxpayers
17 contributing to educational assistance organizations in any one fiscal year shall not exceed
18 fifty million dollars, which amount shall annually be adjusted by the department for
19 inflation based on the consumer price index for all urban consumers for the Midwest
20 region, as defined and officially recorded by the United States Department of Labor or its
21 successor. The director shall establish a procedure by which, from the beginning of the
22 fiscal year until some point in time later in the fiscal year to be determined by the director,

23 the cumulative amount of tax credits are equally apportioned among all educational
24 assistance organizations. If an educational assistance organization fails to use all, or some
25 percentage to be determined by the director, of its apportioned tax credits during this
26 predetermined period of time, the director may reapportion these unused tax credits to
27 those educational assistance organizations that have used all, or some percentage to be
28 determined by the director, of their apportioned tax credits during this predetermined
29 period of time. The director may establish more than one period of time and reapportion
30 more than once during each fiscal year. To the maximum extent possible, the director shall
31 establish the procedure described in this subsection in such a manner as to ensure that
32 taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits
33 available for the fiscal year.

135.714. 1. Each educational assistance organization shall:

- 2 (1) Notify the department of its intent to provide scholarship accounts to qualified
3 students;
- 4 (2) Demonstrate to the department that it is exempt from federal income tax under
5 Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- 6 (3) Provide a department-approved receipt to taxpayers for contributions made to
7 the organization;
- 8 (4) Ensure that:
 - 9 (a) One hundred percent of its revenues from interest or investments is spent on
10 scholarship accounts;
 - 11 (b) At least ninety percent of its revenues from qualifying contributions is spent on
12 scholarship accounts; and
 - 13 (c) Marketing and administrative expenses shall not exceed the following limits of
14 its remaining revenue from contributions: ten percent for the first two hundred fifty
15 thousand dollars, eight percent for the next five hundred thousand dollars, and three
16 percent thereafter;
- 17 (5) Distribute scholarship accounts payments either four times per year or in a
18 single lump sum at the beginning of the year as requested by the parent or guardian of a
19 qualified student, not to exceed a total grant amount equal to the state adequacy target as
20 defined in section 163.011 and calculated by the department of elementary and secondary
21 education, in the form of a deposit into the scholarship account of the qualified student;
- 22 (6) Provide the department, upon request, with criminal background checks on all
23 its employees and board members, and exclude from employment or governance any
24 individual that might reasonably pose a risk to the appropriate use of contributed funds;
- 25 (7) Demonstrate its financial accountability by:

26 (a) Submitting to the department a financial information report for the
27 organization that complies with uniform financial accounting standards established by the
28 department and is conducted by a certified public accountant; and

29 (b) Having an auditor certify that the report is free of material misstatements; and

30 (8) Demonstrate its financial viability, if it is to receive donations of fifty thousand
31 dollars or more during the school year, by filing with the department before the start of
32 the school year a surety bond payable to the state in an amount equal to the aggregate
33 amount of contributions expected to be received during the school year.

34 2. An educational assistance organization shall publicly report to the department
35 by June first of each year the following information prepared by a certified public
36 accountant regarding its grants in the previous calendar year:

37 (1) The name and address of the educational assistance organization;

38 (2) The name and address of each qualified student who opened a scholarship
39 account with the organization;

40 (3) The total number and total dollar amount of contributions received during the
41 previous calendar year;

42 (4) The total number and total dollar amount of scholarship accounts opened
43 during the previous calendar year; and

44 (5) The total number and total dollar amount of scholarship accounts opened
45 during the previous year to qualified students qualifying for the federal free and reduced
46 price school lunch program.

47 3. An educational assistance organization may contract with private financial
48 management firms to manage scholarship accounts with the supervision of the state.

135.716. 1. The department shall provide a standardized format for a receipt to be
2 issued by an educational assistance organization to a taxpayer to indicate the value of a
3 contribution received. The department shall require a taxpayer to provide a copy of this
4 receipt if claiming the tax credit authorized by the program.

5 2. The department shall provide a standardized format for educational assistance
6 organizations to report the information required in subsection 1 of this section.

7 3. The department may conduct either a financial review or an audit of an
8 educational assistance organization if the department possesses evidence of fraud
9 committed by the organization.

10 4. The department may bar an educational assistance organization from
11 participating in the program if the department establishes that the educational assistance
12 organization has intentionally and substantially failed to comply with the requirements in
13 section 135.714. If the department bars an educational assistance organization from the

14 program under this subsection, it shall notify affected qualified students and their parents
15 of the decision as soon as possible after the determination is made.

16 5. The department shall receive no more than two percent of the qualifying
17 contributions for marketing and administrative expenses or the costs incurred in
18 administering the program, whichever is less. The director shall establish procedures to
19 ensure the percentage of funds for administration of the program is directed to the
20 department of economic development in a timely manner with the necessary information
21 to verify the correct amount has been transmitted. The remaining funds shall be
22 distributed to the educational assistance organizations.

135.719. 1. The department and the department of revenue may promulgate rules
2 to implement the provisions of sections 135.712 to 135.719. Any rule or portion of a rule,
3 as that term is defined in section 536.010, that is created under the authority delegated in
4 this section shall become effective only if it complies with and is subject to all of the
5 provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536
6 are nonseverable, and if any of the powers vested with the general assembly pursuant to
7 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are
8 subsequently held unconstitutional, then the grant of rulemaking authority and any rule
9 proposed or adopted after August 28, 2016, shall be invalid and void.

10 2. Under section 23.253 of the Missouri sunset act:

11 (1) The provisions of the new program authorized under sections 135.712 to
12 135.719 shall automatically sunset six years after the effective date of sections 135.712 to
13 135.719 unless reauthorized by an act of the general assembly; and

14 (2) If such program is reauthorized, the program authorized under sections 135.712
15 to 135.719 shall automatically sunset twelve years after the effective date of the
16 reauthorization of sections 135.712 to 135.719; and

17 (3) Sections 135.712 to 135.719 shall terminate on September first of the calendar
18 year immediately following the calendar year in which the program authorized under
19 sections 135.712 to 135.719 is sunset.

166.700. As used in sections 166.700 to 166.720, the following terms mean:

2 (1) "Child with a disability":

3 (a) A child who is at least three years of age but less than twenty-two years of age
4 who has been evaluated and found to have at least one of the following disabilities and who,
5 because of the disability, needs special education and related services:

6 a. An autism spectrum disorder;

7 b. Developmental delay;

8 c. Emotional disability;

9 d. Hearing impairment;

- 10 e. Other health impairments;
- 11 f. Specific learning disability;
- 12 g. Mild, moderate, or severe intellectual disability;
- 13 h. Multiple disabilities;
- 14 i. Multiple disabilities with severe sensory impairment;
- 15 j. Orthopedic impairment;
- 16 k. Preschool severe delay;
- 17 l. Speech or language impairment;
- 18 m. Traumatic brain injury; or
- 19 n. Visual impairment; and
- 20 (b) Shall not include a child if the determining factor for the classification is one
- 21 or more of the following:
 - 22 a. A lack of appropriate instruction in reading, including essential components of
 - 23 reading instruction;
 - 24 b. A lack of appropriate instruction in mathematics; or
 - 25 c. Difficulty in writing, speaking, or understanding the English language due to an
 - 26 environmental background in which a language other than English is primarily or
 - 27 exclusively used;
 - 28 (2) "Curriculum", a complete course of study for a particular content area or grade
 - 29 level, including any supplemental materials;
 - 30 (3) "Department", the department of elementary and secondary education;
 - 31 (4) "Educational assistance organization", the same meaning as used in section
 - 32 135.712;
 - 33 (5) "Eligible postsecondary institution", any approved private institution or
 - 34 approved public institution as defined in section 173.1102;
 - 35 (6) "Parent", the same meaning as used in section 135.712;
 - 36 (7) "Private school", a school that is not a part of the public school system of the
 - 37 state of Missouri and that charges tuition for the rendering of elementary or secondary
 - 38 educational services;
 - 39 (8) "Program", the Missouri empowerment scholarship accounts program;
 - 40 (9) "Qualified school", a home school as defined in section 167.031, a private school
 - 41 as defined in this subsection, or a preschool for children with a disability, that is located
 - 42 in Missouri and that does not discriminate on the basis of race, color, or national origin;
 - 43 (10) "Qualified student", a resident of this state who:
 - 44 (a) Is any of the following:
 - 45 a. Identified as having a disability under Section 504 of the Rehabilitation Act of
 - 46 1973;

- 47 **b. Identified by a district as a child with a disability;**
48 **c. A child with a disability who is eligible to receive services from a school district**
49 **under the Individuals with Disabilities Education Act;**
50 **d. A child who is a ward of the juvenile court and who is residing with a**
51 **prospective permanent placement and for whom the case plan is adoption or permanent**
52 **guardianship; or**
53 **e. A child who was a ward of the juvenile court and who achieved permanency**
54 **through adoption or permanent guardianship; and**
55 **(b) Who did any of the following:**
56 **a. Attended a public school as a full-time student for at least the first one hundred**
57 **days of the prior school year and who transferred from a public school under a contract**
58 **to participate in the Missouri empowerment scholarship account program; or**
59 **b. Previously participated in the Missouri empowerment scholarship account**
60 **program; or**
61 **(c) Is a child who is eligible to begin kindergarten under sections 160.051 to**
62 **160.055.**

- 166.705. 1. A parent of a qualified student may establish a Missouri empowerment**
2 **scholarship account for the student by entering into a written agreement with an**
3 **educational assistance organization. The agreement shall provide that:**
4 **(1) The qualified student shall enroll in a qualified school and receive an education**
5 **in at least the subjects of reading, grammar, mathematics, social studies, and science;**
6 **(2) The qualified student shall not be enrolled in a school operated by a district or**
7 **a charter school and shall release the district of residence from all obligations to educate**
8 **the qualified student; except that, this subdivision shall not relieve the student's district of**
9 **residence from the obligation to conduct an evaluation for disabilities;**
10 **(3) The qualified student shall receive a grant, in the form of money deposited**
11 **pursuant to section 135.714, in the qualified student's Missouri empowerment scholarship**
12 **account;**
13 **(4) The money deposited in the qualified student's Missouri empowerment**
14 **scholarship account shall be used only for the following expenses of the qualified student:**
15 **(a) Tuition or fees at a qualified school;**
16 **(b) Textbooks required by a qualified school;**
17 **(c) Educational therapies or services for the qualified student from a licensed or**
18 **accredited practitioner or provider, including licensed or accredited paraprofessionals or**
19 **educational aides;**
20 **(d) Tutoring services provided by a tutor accredited by a state, regional, or national**
21 **accrediting organization;**

- 22 (e) Curriculum;
- 23 (f) Tuition or fees for a nonpublic online learning program;
- 24 (g) Fees for a nationally standardized norm-referenced achievement test, advanced
25 placement examinations, international baccalaureate examinations, or any exams related
26 to college or university admission;
- 27 (h) Contributions to a qualified tuition program established under 26 U.S.C.
28 Section 529 for the benefit of the qualified student;
- 29 (i) Tuition or fees at an eligible postsecondary institution;
- 30 (j) Textbooks required by an eligible postsecondary institution;
- 31 (k) Fees for management of the empowerment scholarship account by firms
32 selected by the educational assistance organization;
- 33 (l) Services provided by a public school, including individual classes and
34 extracurricular programs; and
- 35 (m) Insurance or surety bond payments as required by the department; and
- 36 (5) Moneys deposited in the qualified student's account shall not be used for any
37 of the following:
- 38 (a) Computer hardware or other technological devices;
- 39 (b) Transportation of the pupil; or
- 40 (c) Consumable educational supplies including, but not limited to, paper, pens,
41 pencils, or markers.
- 42 2. Missouri empowerment scholarship accounts are renewable on an annual basis
43 upon request of the parent of a qualified student. Notwithstanding any changes to the
44 qualified student's multidisciplinary evaluation team plan, a student who has previously
45 qualified for a Missouri empowerment scholarship account shall remain eligible to apply
46 for renewal until the student completes high school and submits scores from a nationally
47 standardized norm-referenced achievement test, advanced placement examination,
48 international baccalaureate examination, or any exam related to college or university
49 admission purchased with Missouri empowerment scholarship account funds to the
50 department.
- 51 3. A signed agreement under this section shall satisfy the compulsory school
52 attendance requirements of section 167.031.
- 53 4. A qualified school or a provider of services purchased under this section shall
54 not share, refund, or rebate any Missouri empowerment scholarship account moneys with
55 the parent or qualified student in any manner.
- 56 5. If a qualified student withdraws from the program by enrolling in a school other
57 than a qualified school, or is disqualified from the program under the provisions of section
58 166.710, the qualified student's Missouri empowerment scholarship account shall be closed

59 and any remaining funds shall be returned to the educational assistance organization for
60 redistribution to other qualified students. Under such circumstances, the obligation to
61 provide an education for such student shall transfer back to the student's district of
62 residence.

63 6. Any funds remaining in a qualified student's scholarship account at the end of
64 a school year shall remain in the account and shall not be returned to the educational
65 assistance organization. Any funds remaining in a qualified student's scholarship account
66 upon graduation from a qualified school may be used for the purposes of postsecondary
67 education as specified in subdivision (4) of subsection 1 of this section. Any funds
68 remaining in a qualified student's account after graduation from an eligible postsecondary
69 institution, or after a period of four years following graduation from a qualified school,
70 whichever occurs first, shall be returned to the educational assistance organization for
71 redistribution to other qualified students.

72 7. Moneys received under sections 166.700 to 166.720 shall not constitute taxable
73 income to the parent of the qualified student.

166.710. 1. The department shall conduct or contract for annual audits of
2 empowerment scholarship accounts to ensure compliance with the requirements of
3 subsection 1 of section 166.705. The department shall also conduct or contract for random,
4 quarterly, and annual audits of empowerment scholarship accounts as needed to ensure
5 compliance with the requirements of subsection 1 of section 166.705.

6 2. A parent or qualified student or vendor may be disqualified from program
7 participation if, after a hearing before the commissioner of education or his or her
8 designee, the party is found to have committed an intentional program violation consisting
9 of any misrepresentation or other act that materially violates any law or rule governing the
10 program. The department may remove any parent or qualified student from eligibility for
11 a Missouri empowerment scholarship program account. A parent may appeal the
12 department's decision to the state board of education. A parent may appeal the state board
13 of education's decision to the circuit court of the county in which the student resides.

14 3. The department may refer cases of substantial misuse of moneys to the attorney
15 general for investigation if the department obtains evidence of fraudulent use of an
16 account.

17 4. The department shall promulgate rules to implement and administer the
18 Missouri empowerment scholarship accounts program including, but not limited to:

- 19 (1) Rules for conducting examinations of use of account funds;
20 (2) Rules for conducting random, quarterly, and annual reviews of accounts;
21 (3) Creating an online anonymous fraud reporting service;
22 (4) Creating an anonymous telephone hotline for fraud reporting; and

23 **(5) A surety bond requirement for account holders.**

24 **5. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
25 **created under the authority delegated in this section shall become effective only if it**
26 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
27 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**
28 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
29 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
30 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2016,**
31 **shall be invalid and void.**

166.715. 1. A person commits a class A misdemeanor if they are found to have
2 **knowingly used moneys granted under section 135.715 for purposes other than those**
3 **provided for in sections 166.700 to 166.720.**

4 **2. No financial institution shall be liable in any civil action for providing a savings**
5 **account's financial information to the department unless the information provided is false**
6 **and the financial institution providing the false information does so knowingly and with**
7 **malice.**

166.720. 1. Sections 166.700 to 166.720 do not permit any governmental agency to
2 **exercise control or supervision over any qualified school in which a qualified student**
3 **enrolls.**

4 **2. A qualified school that accepts a payment from a parent under sections 166.700**
5 **to 166.720 shall not be an agent of the state or federal government.**

6 **3. A qualified school shall not be required to alter its creed, practices, admissions**
7 **policy, or curriculum in order to accept students whose parents pay tuition or fees from**
8 **an empowerment scholarship account to participate as a qualified school.**

9 **4. In any legal proceeding challenging the application of sections 166.700 to 166.720**
10 **to a qualified school, the state shall bear the burden of establishing that the law is**
11 **necessary and does not impose any undue burden on qualified schools.**

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